

### **ELECTION**

Applicant elects, with traverse, what the Examiner has characterized as “Species 2”, deemed drawn to a connector having a shoulder, and corresponding to claims 1-15, 19-22, 24-37, 61-67, 70-81, 85-96, 99, and 101-108.

### **REMARKS**

The Examiner has identified two ‘species’ in the pending claims. The Examiner’s classification of the ‘species’ includes Species 1, directed to Figures 2-12 showing a connector with a channel on the stem portion; and Species 2 directed to Figures 13-17 showing a connector with a shoulder (214).

In making the restriction, the Examiner stated that “applicant clearly discloses one embodiment (species) in figures 2-12, and a separate embodiment (species) in figures 13-17” and that “this is further evident by the language at the beginning of paragraph 54 [in the application], which states ‘Regardless of which of the above embodiments is employed...’” *Office Action*, February 15, 2007, p. 3. While Applicant does not necessarily disagree that different embodiments are described in the current application, Applicant respectfully disagrees with the Examiner’s assertion that this necessitates restriction between those embodiments. As stated in MPEP §806.04(a), “a reasonable number of species may [...] be claimed in the one application...” Thus, Applicant may claim a number of embodiments/species in the present application without a restriction being imposed therebetween. The Examiner must set forth reasons for restriction between species beyond the mere assertion that there is more than one embodiment set forth in the claims of the application.

In an attempt to set forth reasons for restriction, the Examiner stated that “[b]ecause these inventions are independent or distinct... and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP §808.02), restriction for examination purposes as indicated is proper.” *Id.* As set forth in MPEP §806.04(b), species can be either independent or distinct. For independent species, the Examiner must show that “species under a claimed genus are not connected in any of design, operation, or effect.” *MPEP §806.04(b)*. Here, the Examiner has failed to show that the species are not connected in any of design, operation, or effect, but rather, has merely concluded that the species

are independent. This assertion by the Examiner, in and of itself, does not meet the burden under MPEP §806.04(b) to show independent species.

Alternatively, for the Examiner to show that inventions are unrelated as disclosed and are distinct as claimed, “the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those covered in MPEP §806.05 – §806.05(j).” *MPEP §806.04(b)*. The Examiner made no attempt to show that the species are distinct under any section of MPEP §806.05 – §806.05(j). Additionally, the Examiner “must explain why there would be a serious burden on the examiner if restriction is not required.” *MPEP §808.02*. The Examiner may show a serious burden by separate classification, separate status in the art, or a different field of search. *See Id.* Here, the Examiner failed to show any separate classification, any separate status in the art, or any different field of search, beyond the mere statement that different fields of search are required. That is, the Examiner has not shown that the search for Species 1 and 2 would include searching different classes/subclasses or employing different search queries as set forth in MPEP §808.02. Thus, as the Examiner has not shown that the species are distinct under any section of MPEP §806.05 – §806.05(j) or explained why there would be a serious burden if restriction is not required, the Examiner failed to meet the requirements as set forth by MPEP §806.04(b) and MPEP §808.02.

Beyond the Examiner’s failure to provide reasons as to why restriction is required between species, the Examiner has also admitted that claim 1 is generic. Applicant agrees with the Examiner’s characterization of claim 1, but also believes that additional claims are also generic. MPEP §806.04(e) states that “[c]laims may be restricted to a single disclosed embodiment (i.e., a single species, and thus be designated a specific species claim), or a claim may include two or more of the disclosed embodiments within the breadth and scope of definition (and thus be designated a generic or genus claim).” MPEP §806.04(f) further states that “[c]laims to be restricted to different species must be mutually exclusive” and that “[t]he general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.” MPEP §806.04(f) elaborates that “[t]his is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.” As such, in addition to claim 1 being generic, Applicant also believes claims 2-12, 19-22, 25-32, 61-64, 67,

70-77, 93-96, 99, and 101-109 are generic between species 1 and 2. That is, the breadth and scope of claims 2-12, 19-22, 25-32, 61-64, 67, 70-77, 93-96, 99, and 101-109 may include both of the disclosed embodiments, so as to be designated generic or genus claims.

For all these reasons, Applicant respectfully requests rejoinder of all claims, of each species. The Examiner is invited to call the undersigned to discuss this Election or any other matters regarding this application to further prosecution.

Respectfully submitted,

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<sup>1</sup>The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-2623. Should no proper payment be enclosed herewith, as by credit card authorization being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-2623. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extensions under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-2623. Please consider this a general authorization to charge any fee that is due in this case, if not otherwise timely paid, to Deposit Account No. 50-2623.